IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMO No. 236 of 2004.

Date of Decision: 18th August, 2006.

Nishi Kanth and another. Petitioners.

Versus

Ajay Kumar. Respondent.

Coram

The Hon'ble Mr. Justice V.K.Gupta, C.J.

Whether approved for reporting[1]?

For the petitioners: Mr. Bimal Gupta, Advocate.

For the respondent: Mr. Pankaj Sharma, Advocate, vice Mr. Sandeep Kaushik, Advocate.

V.K.Gupta, C.J. (Oral).

The learned Senior Sub Judge vide judgment and decree dated 24th October, 2003 has dismissed the suit of the respondent in toto but the learned Additional District Judge, Sirmaur District at Nahan vide the impugned judgment and decree dated 30th April, 2004 while upsetting the aforesaid judgment and decree of the learned Senior Sub Judge partly allowed the appeal filed by the respondent and decreed the respondent's suit for recovery of money to the extent of Rs.20,000/- only and also granted

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[1] Whether the reporters of Local Papers are allowed to see the Judgment?

interest on this amount at the rate of 6% per annum starting from 5th January, 1999 uptil the date of realization of the entire decretal amount.

After hearing the learned counsel for the parties, I feel convinced that the learned Appeal Court has not committed any error in partly allowing the appeal of the respondent and partly decreeing the suit because undoubtedly in the Income tax return filed by petitioner No.1 there is an acknowledgement of the fact that he had obtained unsecured loan from the respondent. On a proper appreciation of evidence the learned Appeal Court has partly decreed the suit. I feel that in so far as this aspect is concerned no interference is called for.

The learned Appeal Court, however, has also levied interest at the rate of 6% per annum starting from 5th January, 1999. In the facts and circumstances of this case, I feel that the interest liability should have been fastened from the date of the filing of the suit and not from any earlier date. This part of the impugned judgment needs modification and is accordingly modified. It is directed that the interest liability shall be

reckoned from the date of the filing of the suit and not from any earlier date.

The appeal is dismissed. Whatever amount has been deposited by the petitioners in this Court shall be made over to the respondent subject to the adjustment of the interest liability in the light of the aforesaid modification by me. Balance of the deposited amount, subject to above, if any shall be returned to the petitioners.

CMP No.372 of 2004.

In view of the dismissal of the appeal, this application is dismissed. Interim order dated 5th August, 2004 shall stand vacated.

18th August, 2006. (V.K.Gupta), C.J.
(tr)